

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TRAVIS BONDURANT,
Booking # 1573088,

Plaintiff,

NANCY BOOTH

Defendants.

Case No.: 3:16-cv-02254-GPC-JLB

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF. No. 4]**

AND

2) DISMISSING COMPLAINT FOR FAILING TO STATE A CLAIM PURSUANT TO 28 U.S.C. § 1915(e)(2) AND § 1915A(b)

Plaintiff, Travis Bondurant, is a pretrial detainee at George Bailey Detention Facility (“GBDF”). He has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1) and a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 4). Because Plaintiff’s Motion to Proceed IFP complies with 28 U.S.C. § 1915(a)(2), the Court grants him leave to proceed without full prepayment of the civil filing fees required by 28 U.S.C. § 1914(a), but dismisses his Complaint for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b) pursuant to 28 U.S.C.

1 § 1915(e)(2) and § 1915A(b).

2 **I. Plaintiff's Motion to Proceed In Forma Pauperis**

3 All parties instituting any civil action, suit or proceeding in a district court of the
 4 United States, except an application for writ of habeas corpus, must pay a filing fee of
 5 \$400.¹ See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff's failure to
 6 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 7 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
 8 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
 9 proceed IFP remains obligated to pay the entire fee in "increments" or "installments,"
 10 *Bruce v. Samuels*, __ S. Ct. __, 136 S. Ct. 627, 629 (U.S. 2016); *Williams v. Paramo*,
 11 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately
 12 dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th
 13 Cir. 2002).

14 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
 15 "certified copy of the trust fund account statement (or institutional equivalent) for . . . the
 16 6-month period immediately preceding the filing of the complaint." 28 U.S.C.
 17 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
 18 trust account statement, the Court assesses an initial payment of 20% of (a) the average
 19 monthly deposits in the account for the past six months, or (b) the average monthly
 20 balance in the account for the past six months, whichever is greater, unless the prisoner
 21 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having
 22 custody of the prisoner then collects subsequent payments, assessed at 20% of the
 23 preceding month's income, in any month in which his account exceeds \$10, and forwards
 24 those payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2);

26
 27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. See
 28 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
 Dec. 1, 2014). The additional \$50 administrative fee does not apply to persons granted leave to proceed
 IFP. *Id.*

1 Bruce, 136 S. Ct. at 629.

2 In support of his IFP motion, Plaintiff has submitted a copy of his San Diego
 3 Sheriff's Department inmate trust account activity over the course of the last year. See
 4 Doc. No. 2 at 5; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; Andrews, 398 F.3d at
 5 1119. This statement shows that his current available balance is zero (ECF No. 4 at 6),
 6 and it appears Plaintiff is unable to pay any initial fee at this time. See 28 U.S.C.
 7 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a
 8 civil action or appealing a civil action or criminal judgment for the reason that the
 9 prisoner has no assets and no means by which to pay [a] initial partial filing fee.”); Bruce,
 10 136 S. Ct. at 630; Taylor, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a
 11 “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure to
 12 pay . . . due to the lack of funds available to him when payment is ordered.”).

13 Therefore, the Court grants Plaintiff leave to proceed IFP, declines to “exact” any
 14 initial filing fee because his trust account statement shows he “has no means to pay it,”
 15 Bruce, 136 S. Ct. at 629, and directs the Watch Commander at GBDF to collect the entire
 16 \$350 balance of the filing fees required by 28 U.S.C. § 1914 and forward them to the
 17 Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.
 18 § 1915(b)(1). See id.

19 **II. Sua Sponte Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

20 Because Plaintiff is a prisoner and is proceeding IFP, his complaint requires a pre-
 21 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
 22 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of
 23 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
 24 who are immune. See Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
 25 (discussing 28 U.S.C. § 1915(e)(2)); Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir.
 26 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that
 27 the targets of frivolous or malicious suits need not bear the expense of responding.’”
 28 Nordstrom v. Ryan, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting Wheeler v. Wexford

1 Health Sources, Inc., 689 F.3d 680, 681 (7th Cir. 2012)).

2 “The standard for determining whether a plaintiff has failed to state a claim upon
 3 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
 4 Civil Procedure 12(b)(6) standard for failure to state a claim.” Watison v. Carter, 668
 5 F.3d 1108, 1112 (9th Cir. 2012); see also Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th
 6 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
 7 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
 8 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
 9 as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S.
 10 662, 678 (2009) (internal quotation marks omitted); Wilhelm, 680 F.3d at 1121.

11 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
 12 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
 13 Iqbal, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
 14 relief [is] … a context-specific task that requires the reviewing court to draw on its
 15 judicial experience and common sense.” Id. The “mere possibility of misconduct” or
 16 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
 17 this plausibility standard. Id.; see also Moss v. U.S. Secret Service, 572 F.3d 962, 969
 18 (9th Cir. 2009).

19 **A. 42 U.S.C. § 1983**

20 Title 42 U.S.C. § 1983 provides a cause of action for the “deprivation of any rights,
 21 privileges, or immunities secured by the Constitution and laws” of the United States.
 22 Wyatt v. Cole, 504 U.S. 158, 161 (1992). To state a claim under § 1983, a plaintiff must
 23 allege two essential elements: (1) that a right secured by the Constitution or laws of the
 24 United States was violated, and (2) that the alleged violation was committed by a person
 25 acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Long v. Cty. of
 26 Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

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1 **B. Inadequate Medical Care**

2 Plaintiff's Complaint contains very few factual allegations. He alleges that he
 3 "complained of severe pain" on May 13, 2016. (ECF No. 1 at 3.) Plaintiff further alleges
 4 that he had previously suffered from a bullet wound to his abdomen which caused him to
 5 be on "life support" for several months. (*Id.*) Plaintiff claims that the "Chief Medical
 6 Supervisor" at GBDF has deprived him of his pain medication." (*Id.*)

7 Prison officials are liable only if they are deliberately indifferent to the prisoner's
 8 serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976); see also *Clouthier*
 9 *v. Cnty. of Contra Costa*, 591 F.3d 1232, 1241-44 (9th Cir. 2010) (applying *Estelle*'s
 10 Eighth Amendment deliberate indifference standard to inadequate medical care claims
 11 alleged to violate a pretrial detainees' due process rights).

12 Here, Plaintiff claims he is recovering from a gunshot wound. The Court finds
 13 these allegations, while sparse, are sufficient "factual matter" which indicate that his
 14 medical needs were objectively serious. See *McGuckin v. Smith*, 974 F.2d 1050, 1059
 15 (9th Cir. 1991) (defining a "serious medical need" as one which the "failure to treat ...
 16 could result in further significant injury or the 'unnecessary and wanton infliction of
 17 pain.'"), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th
 18 Cir. 1997) (en banc) (citing *Estelle*, 429 U.S. at 104). The "existence of an injury that a
 19 reasonable doctor or patient would find important and worthy of comment or treatment;
 20 the presence of a medical condition that significantly affects an individual's daily
 21 activities; or the existence of chronic and substantial pain are examples of indications that
 22 a prisoner has a 'serious' need for medical treatment." *McGuckin*, 974 F.3d at 1059-60.

23 However, while the Court finds that Plaintiff has shown that he has a serious
 24 medical need, his Complaint lacks sufficient factual allegations to find that a "reasonable
 25 inference that [any individual] defendant" acted with deliberate indifference to his plight.
 26 *Iqbal*, 556 U.S. at 678. "In order to show deliberate indifference, an inmate must allege
 27 sufficient facts to indicate that prison officials acted with a culpable state of mind."
 28 *Wilson v. Seiter*, 501 U.S. 294, 302 (1991). The indifference to medical needs also must

1 be substantial; inadequate treatment due to malpractice, or even gross negligence, does
 2 not amount to a constitutional violation. Estelle, 429 U.S. at 106; Toguchi v. Chung, 391
 3 F.3d 1051, 1060 (9th Cir. 2004) (“Deliberate indifference is a high legal standard.”)
 4 (citing Hallett v. Morgan, 296 F.3d 732, 1204 (9th Cir. 2002); Wood v. Housewright, 900
 5 F.2d 1332, 1334 (9th Cir. 1990)).

6 Here, Plaintiff’s allegations suggest that he is seeking a specific form of pain
 7 medication and it is not at all clear that Plaintiff was not provided with any pain
 8 medication. Plaintiff seeks injunctive relief in the form of an order from this Court
 9 seeking that his medication be “reinstated.” (ECF No. 1 at 7.) A difference of opinion
 10 between a pretrial detainee and the doctors or other trained medical personnel at the Jail
 11 as to the appropriate course or type of medical attention he requires does not amount to
 12 deliberate indifference, see Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing
 13 Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989)), and any delay in providing an
 14 appropriate course of treatment does not by itself show deliberate indifference, unless the
 15 delay is alleged have caused harm. See McGuckin, 974 F.2d at 1060; Shapley v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985).

17 Without more, Plaintiff’s Complaint currently amounts only to “unadorned, the
 18 defendant[s]-unlawfully-harmed-me accusation[s],” which “stop[] short of the line
 19 between possibility and plausibility of ‘entitlement to relief’” as to any constitutionally
 20 inadequate medical care claim. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at
 21 555, 557).

22 C. Leave to Amend

23 A pro se litigant must be given leave to amend his or her complaint to state a claim
 24 unless it is absolutely clear the deficiencies of the complaint cannot be cured by
 25 amendment. See Lopez, 203 F.3d at 1130 (noting leave to amend should be granted when
 26 a complaint is dismissed under 28 U.S.C. § 1915(e) “if it appears at all possible that the
 27 plaintiff can correct the defect”). Therefore, while the Court finds Plaintiff’s Complaint
 28 fails to state any claim upon which relief can be granted, it will provide him a chance to

1 fix the pleading deficiencies discussed in this Order. See *Akhtar v. Mesa*, 698 F.3d 1202,
2 1212 (9th Cir. 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

3 **III. Conclusion and Order**

4 Good cause appearing, the Court:

5 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
6 (ECF No. 2).

7 2. **DIRECTS** the Watch Commander of GBDF, or his designee, to collect from
8 Plaintiff's trust account the \$350 filing fee owed in this case by garnishing monthly
9 payments from his account in an amount equal to twenty percent (20%) of the preceding
10 month's income and forwarding those payments to the Clerk of the Court each time the
11 amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL
12 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
13 ASSIGNED TO THIS ACTION.

14 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on the Watch
15 Commander, George Bailey Detention Facility, 446 Alta Road, Ste. 5300, San Diego,
16 California, 92158.

17 4. **DISMISSES** Plaintiff's Complaint for failing to state a claim upon which
18 § 1983 relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1).

19 5. **GRANTS** Plaintiff forty-five (45) days leave in which to file an Amended
20 Complaint which cures all the deficiencies of pleading described in this Order. Plaintiff is
21 cautioned, however, that should he choose to file an Amended Complaint, it must be
22 complete by itself, comply with Federal Rule of Civil Procedure 8(a), and that any claim
23 not re-alleged will be considered waived. *See S.D. CAL. CivLR 15.1; Hal Roach Studios,*
24 *Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) ("[A]n amended
25 pleading supersedes the original."); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
26 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an
27 amended pleading may be "considered waived if not replied.").

1 If Plaintiff fails to follow these instructions and/or files an Amended Complaint
2 that still fails to state a claim, his case may be dismissed without further leave to amend.
3 *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take
4 advantage of the opportunity to fix his complaint, a district court may convert the
5 dismissal of the complaint into dismissal of the entire action.”).

6 **DIRECTS** the Clerk of Court to mail to Plaintiff, together with this Order, a
7 blank copy of the Court’s form “Complaint under the Civil Rights Act, 42 U.S.C.
8 § 1983” for his use in amending.

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10 **IT IS SO ORDERED.**

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12 Dated: October 5, 2016



13 Hon. Gonzalo P. Curiel
14 United States District Judge

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